

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX COUNTY
Docket No. L-1669-01
Mass Tort Code 248

KATHLEEN JANES, et al.,

Plaintiffs,

vs.

CIBA-GEIGY CORPORATION, et al.,

Defendants.

Civil Actions

CASE MANAGEMENT ORDER I

The above matter having come before the Court and for good cause the following Case Management Order is entered:

I. GENERAL APPLICABILITY.

1. This Order applies to this case as part of the coordinated pre-trial discovery, to avoid duplication and to prevent conflicts. The cases are centralized for coordinated pre-trial discovery with the other cases identified in Exhibits A and B in Case Management Order I In Re Toms River Tort Litigation, Mass Tort Case Code 248 only for the purposes of discovery. This case will retain its own docket number.

2. The civil “Best Practices” system for Mass Tort Track IV is superseded by this Order and subsequent Scheduling Orders entered in this litigation.

3. All orders, notices and other documents filed with the Court common to the entire litigation shall be available on the Judiciary Web Page for Mass Tort Litigation, which may be accessed at www.judiciary.state.nj.us/mass-tort/index.htm.

II. CAPTIONS, PLEADINGS & SERVICE.

1. All parties are to file individual complaints with the Clerk, Mass Tort Litigation, Middlesex County Courthouse, P.O. Box 2690, New Brunswick, New Jersey

08903-2690. The Case Information Statement accompanying the pleading shall identify the case code as #248.

2. Each complaint is limited to one plaintiff or a related household of plaintiffs. No plaintiff may use the caption required by the Supreme Court's January 12, 2001 Order or any amendments thereto.

3. All pleadings, motion papers and correspondence shall add the letter MT after the docket number indicating Mass Tort and under the caption Civil Action shall add the title of this litigation required by the Supreme Court's January 12, 2001 Order or any amendments thereto.

4. The Clerk of the Court shall maintain a master docket and the case file caption required by the Supreme Court's January 12, 2001 Order or any amendments thereto. Unless otherwise provided by the Court, only Case Management Orders, Scheduling Orders, or other documents filed therein are deemed filed and docketed in each individual case.

5. Amended Pleadings: It shall be the obligation of the party filing Amended pleadings to provide a cover letter to existing parties, with copies to the Court identifying all new claims and all new parties brought into the action by the new pleading.

6. The last Answer filed by each party shall be deemed an Answer to all future amended pleadings unless a new claim is asserted against that party.

7. All cross-claims for contribution and indemnification are deemed filed and are deemed denied without the necessity for any pleadings to be filed.

8. Upon receipt of a copy of a Petition in Bankruptcy or an Order of a U.S. Bankruptcy Judge implicating a defendant herein, that defendant-debtor shall be severed from all cases in which it is named and the action shall proceed against the remaining defendants. Any action to reinstate the debtor-defendant is subject to an Order from the U.S. Bankruptcy Judge.

III. PRELIMINARY MATTERS.

1. Each party shall preserve all documents and other records containing information potentially relevant to this litigation. Each party shall also preserve any physical evidence or potential evidence and shall not conduct any tests on physical evidence without notifying opposing counsel. Unless opposing counsel stipulate to the test, no test shall be conducted without obtaining the court's permission. This provision shall not, however, apply to any medical testing of a plaintiff or any air, water or soil testing and/or other remedial activity at the site subject to overview by the USEPA and/or NJDEP. Access to such sampling or testing under USEPA or NJDEP oversight shall be provided by defendants.

2. Computerized data of the parties containing information potentially relevant to the litigation shall not be erased under existing programs until:

- a. opposing counsel have been notified of all existing programs; and
- b. printouts of the data are preserved.

3. In the event that any party has a question whether a document or other evidence should be maintained and not destroyed, counsel for that party shall inquire to all other counsel. If all counsel agree, the document or other evidence may be destroyed without further recourse. If the parties do not agree, the document or other evidence shall be maintained until further Order from the Court or Special Master.

IV. ATTORNEYS.

1. Counsel are expected to act in a courteous, professional manner during the conduct of this litigation. Each attorney should make a good faith effort to resolve disputes out of court and in an expeditious manner. Counsel must attempt to resolve motions before any matter is submitted to the court and must certify to that attempt.

2. Counsel for plaintiffs shall provide the Court with an official service list updated monthly. The list must contain the case name, docket number and the date

entered on the first page. For each party, counsel must be identified by name, firm, address, telephone number, fax number and e-mail address. If counsel has been admitted pro hac vice, the date of such admission shall be included.

3. Counsel lists are not to be appended to any court submission. The counsel list shall be incorporated by reference on all certificates of service, all pleadings, all motions, all correspondence.

4. Multiple Counsel: Where a party is represented by more than one counsel of record, that party shall designate to liaison counsel and to the Court and Special Master, the name and address of the single counsel to be the recipient of all notices, communications and pleadings. The designated counsel will be responsible for notifying co-counsel of all such matters.

5. Pro Hac Vice Admissions:

- a. Pro hac vice admissions are limited to four (4) counsel per party in each case.
- b. An attorney seeking to appear pro hac vice shall apply by formal notice of motion with supporting affidavit and proposed form of order, in compliance with R.1:21-2 of the Rules Governing the Courts of New Jersey.
- c. Pro hac vice counsel may try the case but is not to be designated trial counsel. No proceedings shall be adjourned because pro hac vice counsel is not available.
- d. All pleadings, motions and correspondence to the Court and Special Master must be submitted by New Jersey counsel unless the Court or Special Master specifically waives this provision to foster settlements.
- e. Out-of-state attorneys representing plaintiffs must certify that all retainer agreements with clients in the subject litigation do not, and in the future will not, violate any of the contingency fee provisions found in the Rules Governing the Courts of New Jersey for the current year.
- f. All out-of-state attorneys seeking admission to represent a corporate defendant must certify as to his or her prior involvement with that corporation or its related entities,

including the capacity in which he or she was involved. Further, the attorney must include in the affidavit a statement of his or her good faith belief that he or she was not involved with policy or management decisions which would require him or her to be called as a witness in any matter before the Court.

- g. Counsel admitted pro hac vice shall be required to make annual payment to the Ethics Financial Committee and to the New Jersey Lawyers' Fund for Client Protection.

V. LIAISON COUNSEL.

Liaison counsel appointed by the Court are as follows:

- a. plaintiffs in Janes: John E. Keefe, Jr., Esq.; and
- b. defendant Ciba: David W. Field, Esq.

Plaintiffs' and Defendants' Liaison Counsel shall be generally responsible for coordinating the activities of the parties pursuant to The Manual for Complex Litigation Third. Plaintiffs also designate Allan Kanner, Esq. as Lead Counsel who shall assume the responsibilities pursuant to The Manual for Complex Litigation Third.

VI. PROCEDURE FOR COMPLEX LITIGATION.

Counsel are expected to familiarize themselves with The Manual for Complex Litigation Third by the Federal Judicial Center 1995, and be prepared at the conference to suggest procedures that will facilitate the just, speedy and inexpensive resolution of this litigation.

VII. CONFERENCE PROCEDURES.

1. The Court or Special Master may conduct, and the parties may request, periodic status and scheduling conferences to assess the progress regarding the matters scheduled herein. Reasonable notice of all such conferences will be provided to all counsel of record.

2. Transcripts: All case management conferences or parts thereof shall be transcribed by an official court reporter or by a reporter provided by a party. The parties

will share equally the cost of the reporter's attendance and resulting transcripts. In any proceeding in which a transcript is ordered, counsel shall ensure that the Court is provided with Live Notes and that a clean copy of the transcript and a disk is supplied thereafter.

3. Appearances: Counsel appearing at each case management conference must sign an attendance sheet, be familiar with the issues to be discussed and not schedule other matters for the date of the conference.

4. Compliance: All counsel are required to comply with the provisions of each case management order whether or not he or she was in attendance at the conference giving rise to the Order.

VIII. MOTIONS.

1. Filing Requirement: All motions are to be filed with the Clerk, Mass Tort Litigation, Superior Court of New Jersey, Middlesex County Courthouse, P.O. Box 2690, New Brunswick, New Jersey 08903-2690. Motions are not to be filed with the Court or with the Special Master. All motion papers must include a return date, scheduled for a regular motion Friday.

2. Any motion that is applicable to more than one case shall be noted on the first page by listing each docket number or if all, the notation "applicable to all cases".

3. Any motion that is applicable to more than one party in a case shall be jointly filed by counsel for all of the moving parties. Counsel shall coordinate such filings.

4. Copies: Counsel shall file no more than one original copy of each Notice of Motion, supporting documents and proposed form of Order or Recommendation with the Clerk's Office, along with a self-addressed stamped envelope for the return of the signed Order or Recommendation. One additional copy of these papers may be supplied if a request is made for a return of that copy marked "filed". Copies will be sent to the Court, along with a disk in Word Perfect 6.0.

5. The Court will advise the Clerk that the rules governing filing fees will be relaxed so as to only require one filing fee for any motion even though its result may apply to more than one case.

6. Forum:

Until a Special Master is appointed, the Court shall hear all motions. If a Special Master is appointed, the following provisions shall govern:

- a. All discovery motions shall be heard initially by the Special Master and all substantive motions by the Court. It is necessary to list the name of the Judge or the Special Master in the Notice of Motion and in the cover letter for filing.
- b. In addition to discovery motions, the Special Master shall hear motions for dismissals of non-implicated defendants.
- c. A proposed form of Order shall be submitted for substantive motions and a proposed form of Recommendation shall be submitted for discovery motions. In both cases, a stamped self-addressed envelope must be included.

7. Captions: Captions on motions are the same as on pleadings and require the MT for Mass Tort after the docket number and the designation “In Re Toms River Litigation”.

8. Substantive Motions: Approval of the Special Master or the Court is required before any motion related to substantive issues is filed. All motions in limine, motions for Daubert, Perez or Lopez hearings shall be scheduled by the Court during pre-trial management conferences.

9. Oral Argument: No oral argument shall be held for discovery motions unless requested by the Special Master, or granted by the Special Master in response to the request of a party. The Special Master may, in his/her discretion, schedule a telephone conference call on the return date of the motion in order to hear from all sides prior to determining such motions.

10. Pursuant to this Court's Order dated March 2, 2001 in In Re Toms River Tort Litigation, the Hon. Phillip A. Gruccio is appointed to act as a mediator. All provisions of the March 2, 2001 Order are incorporated herein.

IX. APPEALS FROM SPECIAL MASTER'S RECOMMENDATIONS.

In the event that a Special Master is appointed, the following procedure shall govern: the Special Master shall provide the parties with a written Recommendation on the resolution of any non-disposition motion. Upon receipt, the party who brought the issue to the Special Master shall draft and circulate a proposed form of Order which shall be sent to the Court with a copy of the Special Master's Recommendation for Resolution. Parties shall have ten (10) business days to file and serve written objections to the Recommendation. If no objection is filed within ten (10) days, the Recommendation will be memorialized by entry of the form of Order submitted to the Court. Except for the requirement that objections to a Recommendation be filed within ten (10) days, such a filing shall be treated as any other substantive motion pursuant to this Case Management Order.

X. PHASE ONE OF FACT DISCOVERY.

All written discovery requests and responses thereto shall be furnished to all other counsel on an electronic disk or other communication.

1. Document Requests and Interrogatories.

Plaintiffs and defendants shall serve defendants with their written discovery requests by May 23, 2001. Responses to all document requests shall be made in writing within 45 days and all interrogatories shall be answered within 75 days.

Specific guidelines regarding document production will be addressed in Case Management Order II.

2. Depositions.

The scheduling of depositions shall be addressed in Phase Two of Discovery.

XI. DISPOSITIVE MOTIONS.

Dispositive motions may be filed at any time. Unless otherwise agreed to by counsel or ordered by the Court, the briefing schedule shall follow R. 4:46-1.

XII. SERVICE OF THIS ORDER.

A copy of this Order be served on all counsel of record and shall be served on any subsequently joined party at the time that party is served.

Dated: April , 2001

Hon. Marina Corodemus, J.S.C.